



1995 ASSEMBLY BILL 478

July 5, 1995 – Introduced by Representatives SILBAUGH, UNDERHEIM and KREUSER.
Referred to Committee on Consumer Affairs.

1 **AN ACT** *to renumber and amend* 448.06 (2); *to amend* 448.01 (9) (a) and 448.01
2 (11); and *to create* 448.01 (2d), 448.02 (3) (am), 448.02 (4m) and 448.06 (2) (b)
3 of the statutes; **relating to:** the grounds for disciplinary action against a person
4 regulated by the medical examining board and requiring the medical
5 examining board to consult certain persons when conducting disciplinary
6 investigations.

Analysis by the Legislative Reference Bureau

Under current law, the medical examining board (board) issues credentials to physicians, podiatrists, occupational therapists, physician assistants and respiratory care practitioners (credential holders). The board is required to investigate allegations of unprofessional conduct and negligence in treatment by credential holders. The board may warn or reprimand a credential holder, or limit, suspend or revoke the credential of a credential holder, if the credential holder is found to have engaged in unprofessional conduct or negligence in treatment or if the credential holder is found to have violated laws regulating controlled substances. The board may also deny a credential or refuse to renew a credential if the applicant for the credential or for renewal of the credential has engaged in unprofessional conduct. Under current law, the board defines what constitutes unprofessional conduct.

This bill prohibits the board from warning or reprimanding a credential holder, limiting, suspending or revoking the credential of a credential holder, denying a credential or refusing to renew a credential solely because the credential holder or credential applicant is providing nonconventional care, which is defined by the bill to mean any method of diagnosis, treatment, prescribing or advising employed by a physician that is not generally used but that the physician reasonably expects will effectively treat disease.

Also, under the bill, as part of its investigation into allegations of unprofessional conduct or negligence in treatment by a physician, the board must consult with at least one physician from the area of medical specialty of the physician being investigated. If the specialty area of the treatment provided by the physician being investigated differs from the specialty area of that physician, the board must consult at least one physician from the area of medical specialty of the treatment provided. Finally, if the allegation of unprofessional conduct or negligence in treatment involves nonconventional care, the board must also consult with at least one physician who devotes a significant portion of his or her practice to the type of nonconventional care that was provided by the physician being investigated.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 448.01 (2d) of the statutes is created to read:

2 448.01 (2d) “Nonconventional care” means any method of diagnosing, treating,
3 prescribing or advising employed by a physician that is not generally used but that
4 the physician reasonably expects will effectively treat disease.

5 **SECTION 2.** 448.01 (9) (a) of the statutes is amended to read:

6 448.01 (9) (a) To examine into the fact, condition or cause of human health or
7 disease, or to treat, operate, prescribe or advise for the same, by any means or
8 instrumentality, including nonconventional care.

9 **SECTION 3.** 448.01 (11) of the statutes is amended to read:

10 448.01 (11) “Unprofessional conduct” means those acts or attempted acts of
11 commission or omission defined, subject to s. 448.02 (4m), as unprofessional conduct
12 by the board under the authority delegated to the board by s. 15.08 (5) (b) and any
13 act by a physician or podiatrist in violation of ch. 161 or 450.

14 **SECTION 4.** 448.02 (3) (am) of the statutes is created to read:

1 448.02 (3) (am) 1. As part of an investigation under par. (a) of an allegation of
2 unprofessional conduct in providing treatment or an allegation of negligence in
3 treatment, the board shall consult with at least one physician from the area of
4 medical specialty of the physician who provided the treatment or, if the specialty area
5 of the treatment provided is different than the specialty area of the physician who
6 provided the treatment, consult with at least one physician from the area of medical
7 specialty of the treatment provided.

8 2. In addition to the consultation required under subd. 1., if the board is
9 investigating an allegation of unprofessional conduct in providing treatment or an
10 allegation of negligence in treatment and the treatment provided involves
11 nonconventional care, the board shall consult with at least one physician who
12 devotes a significant portion of his or her practice to the type of nonconventional care
13 provided by the physician being investigated.

14 **SECTION 5.** 448.02 (4m) of the statutes is created to read:

15 448.02 (4m) DISCIPLINE BASED ON NONCONVENTIONAL PRACTICE. Notwithstanding
16 subs. (3) and (4), the board may not warn or reprimand a person under sub. (3), or
17 may not limit, suspend or revoke under sub. (3) or (4) any license, certificate or
18 limited permit granted by the board to a person, solely on the grounds that the person
19 provides nonconventional care.

20 **SECTION 6.** 448.06 (2) of the statutes is renumbered 448.06 (2) (a) and amended
21 to read:

22 448.06 (2) (a) The Except as provided in par. (b), the board may deny an
23 application for any class of license or certificate and refuse to grant such license or
24 certificate on the basis of unprofessional conduct on the part of the applicant, failure
25 to possess the education and training required for that class of license or certificate

1 for which application is made, or failure to achieve a passing grade in the required
2 examinations.

3 **SECTION 7.** 448.06 (2) (b) of the statutes is created to read:

4 448.06 (2) (b) The board may not deny an application for any class of license
5 or certificate or may not refuse to grant such license or certificate solely on the
6 grounds that the person provides nonconventional care.

7 **SECTION 8. Initial applicability.**

8 (1) DISCIPLINARY PROCEEDINGS. The treatment of section 448.02 (4m) of the
9 statutes first applies to disciplinary proceedings commenced on the effective date of
10 this subsection.

11 (2) INVESTIGATION OF COMPLAINTS. The treatment of section 448.02 (3) (am) 1.
12 and 2. of the statutes first applies to investigations of allegations of unprofessional
13 conduct or negligence in treatment that begin on the effective date of this subsection.

14 (3) DENIAL OF LICENSE APPLICATIONS. The renumbering and amendment of
15 section 448.06 (2) of the statutes and the creation of section 448.06 (2) (b) of the
16 statutes first applies to applications for a license or certificate that are submitted on
17 the effective date of this subsection.

18 (END)